

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

March 11, 2005

IN RE:

**BELLSOUTH'S PETITION TO ESTABLISH
GENERIC DOCKET TO CONSIDER
AMENDMENTS TO INTERCONNECTION
AGREEMENTS RESULTING FROM CHANGES
OF LAW**

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**DOCKET NO.
04-00381**

**ORDER ADDRESSING MOTIONS FOR
EMERGENCY RELIEF, CONFIRMING ORAL ARGUMENT,
REPLACING MOTION TO DISMISS WITH MOTION TO
BIFURCATE, AND ESTABLISHING STATUS CONFERENCE DATE**

This matter is before the Hearing Officer upon several motions for emergency relief filed by interested parties,¹ a *Motion to Bifurcate of KMC, NuVox/NewSouth, and Xspedius* (“*Motion to Bifurcate*”²), and for consideration of other pending. At a status conference on March 8, 2005, the Hearing Officer considered the pending motions for emergency relief, established general parameters for the oral arguments set for March 14, 2005, considered the *Motion to Bifurcate*, and scheduled a time for the next status conference.

¹ See *Motion for Emergency Relief*, (February 25, 2005); *MCI's Motion For Expedited Relief Concerning UNE-P Orders* (March 2, 2005), *Cinergy Communications Company's Motion for Emergency Relief* (March 2, 2005)

² The *Motion to Bifurcate* was filed by NuVox Communications, Inc. on behalf of its operating entities NuVox Communications, Inc. and NewSouth Communications Corporation (collectively NuVox/NewSouth), KMC Telecom V, Inc. and KMC Telecom III, LLC (collectively “KMC”), and Xspedius Communications, LLC on behalf of its operating subsidiaries, Xspedius Management Co. Switched Services, LLC, and Xspedius Management Co. of Chattanooga, LLC (collectively “Xspedius”).

MOTIONS FOR EMERGENCY RELIEF AND ORAL ARGUMENT

The Federal Communications Commission ("FCC") released its Triennial Review Remand Order ("TRRO") on February 4, 2004. On February 11 and February 25, BellSouth Telecommunications, Inc. ("BellSouth") sent carrier notification letters to the competitive local exchange carriers ("CLECs"), stating that BellSouth is not required by the TRRO to offer certain unbundled network elements ("UNEs") or certain UNE pricing as of March 11, 2005.³ According to BellSouth, this change is self-effectuating as applied to new orders for de-listed UNEs ("new adds").

Several CLECs filed motions asking the Tennessee Regulator Authority ("Authority") to grant emergency relief and to issue an order preventing BellSouth from rejecting the UNE orders as of March 11, 2005. Specifically, the Authority received the *Motion for Emergency Relief*, filed by KMC, NuVox and Xspedius on February 25, 2005; *MCI's Motion For Expedited Relief Concerning UNE-P Orders* filed by MCImetro Access Transmission Services, LLC on March 2, 2005; and *Cinergy Communications Company's Motion for Emergency Relief* filed by Cinergy Communications Company on March 2, 2005. Other CLECs filed letters in support of the motions for relief and in opposition to BellSouth's proposed action.⁴

The CLECs contend that the TRRO provisions are not self-effectuating as applied to new adds and that, instead, the TRRO requires that new adds be handled through the change-of-law

³ More specifically, BellSouth set forth that it was not required to offer the UNEs under the rates, terms and conditions of its existing interconnection agreements with CLECs, the TRRO provided a transition period for the CLECs "embedded base" of customers, and the TRRO was self-effectuating on March 11, 2004 for any "new adds."

⁴ See *Letter From LecStar Telecom Submitted To BellSouth On February 24, 2005* (March 2, 2005), *ITC DeltaCom's Letter To BellSouth In Response To BellSouth's Carrier Notice Letter Dated February 11, 2005* (March 2, 2005), *Letter Notifying The TRA Of XO's Support Of The Motion For Emergency Relief* (March 3, 2005), *Response Of Navigator Telecommunications, LLC To BellSouth's Carrier Notification Letter SN91085039* (March 9, 2005)

provisions in parties' interconnection agreements. According to the CLECs, BellSouth will be in breach of contract with the CLECs if it stops taking new adds on March 11, 2005.⁵

On March 8, 2005 BellSouth filed *BellSouth Telecommunications Inc.'s Response in Opposition to the Joint Petitioners' Motion for Emergency Relief*. The same day, BellSouth also submitted a letter to the Hearing Officer concerning the upcoming March 11 deadline for "new adds" orders. BellSouth stated that it will continue to receive and will not reject orders for "new adds" until the earlier of (1) an order from an appropriate authority, allowing BellSouth to reject the orders, or (2) April 17, 2005. BellSouth notified the CLECs of this change by carrier notification letter dated March 7, 2005, and BellSouth provided a copy of that letter as an attachment to the Hearing Officer's letter.

Oral argument in this docket has been set and noticed for Monday, March 14, 2005, before the voting panel during the regularly scheduled Authority Conference. The argument will address the issues presented through the emergency motions, supporting letters, and responses in opposition to the motions. The parties agreed that argument should conclude within one hour, including questions from the bench. BellSouth will be allotted one half-hour, and the CLECs jointly will be allotted one half-hour.

MOTION TO BIFURCATE

KMC, NuVox/NewSouth, and Xspedius (collectively "Joint Arbitration Petitioners") filed the *Motion to Bifurcate* as a replacement to the earlier *Motion to Dismiss of KMC*,

⁵ See, e.g., *Motion for Emergency Relief*, p. 11 (February 25, 2005) (BellSouth "cannot be permitted to usurp its commitments" and its planned actions will "contravene the FCC's express directive"), *MCI's Motion For Expedited Relief Concerning UNE-P Orders*, p. 11 (March 2, 2005) ("BellSouth must undertake the change of law process to implement the changes specified in the TRRO"); and *Cinergy Communications Company's Motion for Emergency Relief*, pp. 4, 7 (March 2, 2005) (BellSouth's letter described "planned illegal actions" and "amounted to an anticipatory breach" of the interconnection agreements).

NuVox/NewSouth, and Xspedius ("Motion to Dismiss"), which was filed by the Joint Arbitration Petitioners on December 8, 2004.

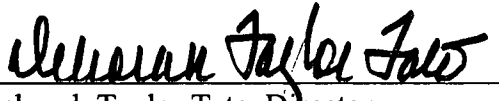
The Joint Arbitration Petitioners requested that the Hearing Officer accept the *Motion to Bifurcate* as a replacement for the *Motion to Dismiss*. The Hearing Officer granted the replacement and also encouraged others to join in the *Motion to Bifurcate* or to come forward during or at the next status conference regarding any issues with bifurcation.

ISSUES LIST AND STATUS CONFERENCE

BellSouth, Joint Arbitration Petitioners and the CLECs agreed to cooperate in revising the joint issues list. They and the Hearing Officer also agreed to convene for another status conference on March 28, 2005 at 1:00 p.m. (central).

IT IS THEREFORE ORDERED THAT:

1. BellSouth and the CLECs will present oral argument on Monday, March 14, 2005, before the voting panel assigned to this docket during the regularly scheduled Authority Conference.
2. The *Motion to Bifurcate* is accepted as a replacement for the previous *Motion to Dismiss* filed by the Joint Arbitration Petitioners.
3. BellSouth, the Joint Arbitration Petitioners, the CLECs, and all interested parties shall reconvene for another status conference before the Hearing Officer on Monday, March 28, 2005 at 1:00 p.m. (central).


Deborah Taylor Tate, Director
As Hearing Officer